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Letter dated 3 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 July 2003 (S/2003/742).

The Counter-Terrorism Committee has received the attached third report from Viet Nam submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 2 December 2003 from the Permanent Mission of Viet Nam to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and with reference to his letter dated 27 June 2003 has the honour to submit the updated report requested (see enclosure).

Enclosure

SOCIALIST REPUBLIC OF VIETNAM

SECOND SUPPLEMENTARY REPORT
TO THE COUNTER-TERRORISM COMMITTEE OF THE UNITED NATIONS SECURITY COUNCIL PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL'S RESOLUTION 1373 (2001)

Vietnam's response to the questions of the Counter-terrorism Committee of the United Nations Security Council contained in the letter No. S/AC40/2003/MS/OC284 dated 27 June 2003 regarding the implementation of the Security Council's Resolution 1373 (2001) appears as follows:

1. IMPLEMENTATION MEASURES:

1.1. The CTC has agreed on further questions and comments for the consideration of the Government of Vietnam with regard to the implementation of the Resolution, as set out in this section.

1.2. Regarding the criminalization of terrorist financing and the prosecution of offenders:

1.2.1. Criminalization of terrorist financing: The CTC has noted that Vietnam has ratified the UN Convention for the Suppression of the Financing of Terrorism. The Committee would be grateful for a report on the enactment and implementation in Vietnamese law of this international instrument. Please outline the provisions contained in the new legislation and indicate what further steps still need to be taken.

Vietnam's response:

According to the Ministry of Justice's General Report on the Evaluation of the Needs for Comprehensive Development of the Vietnamese Legal System up to the Year 2010 and the Draft Strategy for Development of Vietnamese Legal System up to the Year 2010, which is being finalized by the Ministry of Justice in cooperation with other concerned ministries, the Penal Code will be amended so that the provisions on counter-terrorism under the international treaties to which Viet Nam is a party, including the UN Convention for the Suppression of the Financing of Terrorism, be transformed into the Vietnamese law.

1.2.2. General requirements of paragraph 1 (c) and (d): The legislation provided by Vietnam (Article 7 of Governmental Decree No. 87/CP and 27 of Decree No. 20/2002/ND-CP) does not relate to the requirements of these sub-paragraphs. The CTC would welcome receiving particulars of the legal provisions which Vietnam has put in place to comply with these requirements. In their absence, the CTC would be glad to receive and indication of the remedial action which Vietnam intends taking in this regard.

Vietnam's response:

a. Although Vietnam has not yet enacted any separate legal instruments to prohibit Vietnamese nationals or any person or entity in Vietnam from making funds and other financial resources

available to persons or entities linked to terrorist activities, those who commit this act may be prosecuted pursuant to the Article 84 (terrorism) of the Penal Code as the helper[1].

b. Vietnam has detailed provisions regulating the depositing, withdrawing and payment of foreign currencies by individuals and entities of Vietnam, the opening domestic and overseas accounts and the purposes for which foreign currencies of those accounts are used and the transferring of foreign currencies into and out of Vietnam (please refer to paragraph B (I) (3) (a) of the Supplementary Report dated 18 December 2002). These provisions shall restrict individuals and entities in Vietnam to use foreign currencies for illegal purposes, including the financing of terrorism.

In addition, Vietnam also laid out some restrictions and provisions on the movement of precious commodities (which may be done for the purpose of making funds and other financial resources available to persons or entities linked to terrorist acts), such as some provisions of Decision No. 416-1998/QD-NHNN7 dated 08 December 1998 of the Governor of the State Bank on the bringing of gold by individuals when entering into or departing from Vietnam, in particular:

- "*Individuals when departing from or entering into Vietnam will not have to declare at the Vietnam's border checkpoints if they bring along gold for non-commercial purposes with maximum weight of 300 gram (or besides the wearing jewelry, the quantity of each type not exceeding 5 pieces or 5 sets, in case of jewelry)*" (Article 2).

- "*Individuals who bring gold (not of international standard) with the amount exceeding the maximum weight prescribed under Article 2 of this Decision but not exceeding 3000 gram when entering into Vietnam shall declare and pay tax for the exceeded amount in accordance with the relevant regulations. In case of exceeding 3000 gram, they shall complete the necessary procedures to lodge the excesses in the customs warehouse in order to bring them back when departing or to send them abroad. These individuals shall bear the arising costs*" (Article 3).

- "*Individuals who bring more than 300 gram of gold when departing from Vietnam shall apply for permission by the State Bank of Vietnam on the amount exceeding 300 gram*" (Article 4).

- "*Procedure to apply for permission to bring gold when departing from Vietnam.*

Individual who wants to apply for permission to bring gold when departing from Vietnam under Article 4 of this Decision shall file its documents to the Central State Bank or the local branches of the State Bank in the districts or cities in accordance with the authorities to grant permission as prescribed under Article 6 of this Decision. The documents shall include:

1. An application to bring gold (which clarifies the purposes to bring gold);

2. Other documents specifying the origins of the gold to be brought (if any);

3. Certified copy of passport (if the passport copy is not certified, the original passport must be presented for reference)" (Article 5).

1.2.3. Paragraph 2 (d) of the Resolution 1373 also stipulates that: "All States shall prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purpose against other states or their citizens". However, it would appear from Vietnamese legislation, as described in Vietnam's report (Article 2, 5 and 84 of the Penal Code), that penal

[1] According to the Penal Code, "the helpers are those who create spiritual or material conditions for the commission of crimes" (Article 20 - Complicity).

provisions do neo appear to exist in Vietnamese law with a view to criminalizing the preparation of terrorist acts on Vietnamese territory for commission abroad. Could Vietnam indicate the steps which it proposes taking to remedy the situation?

Vietnam's response:

a. Vietnam has not yet enacted any particular provisions on the activities implemented in the Vietnamese territory in preparation for terrorist acts to be committed in the territory of other countries. However, those who commit this act may be prosecuted for the penal liability pursuant to the Penal Code as the person preparing for the commission of terrorism, provided that the commission abroad of those terrorist acts is aimed at "opposing the Vietnamese people's administration" and "causing difficulties to the international relations of the Socialist Republic of Vietnam"[2]. Accordingly, Article 17 of the Penal Code provides that:

"*Article 17. Preparation for crime commission*

Preparation for crime commission is to search for prepare instruments or create other conditions for committing crimes.

Persons who prepare for the commission of a very serious crime or a particularly serious crime shall bear penal liability for their attempted crime."

1.2.4. **Competence of the courts**: The CTC would be grateful to receive the provisions in Vietnamese law which provide for the prosecution and trial of an offender, whether a Vietnamese national or a foreigner, who has committed an offence outside Vietnam.

Vietnam's response:

The prosecution and trial of an offender, whether a Vietnamese national or a foreigner, who has committed an offence outside Vietnam are governed by the provisions of the Penal Code and the Criminal Procedure Code. Those are:

a. Article 6 of the Penal Code:

"*1. Vietnamese citizens who commit offences outside the territory of the Socialist Republic of Vietnam may be examined for penal liability in Vietnam according to this Code.*

This provision also applies to stateless persons who permanently reside in the Socialist Republic of Vietnam.

2. Foreigners who commit offences outside the territory of the Socialist Republic of Vietnam may be examined for penal liability according to the Penal Code of Vietnam in circumstances provided for in the international treaties to which the Socialist Republic of Vietnam is a party."

b. Paragraph 2 of Article 146 (territorial jurisdiction) of the Criminal Procedure Code:

"*In respect to an offence committed abroad by the accused to be tried in Vietnam, a provisional court of the last domicile of the accused shall have jurisdiction over the case. Should such last domicile is uncertain, the President of the Supreme People's Court shall, depending on each circumstance, by mean of a decision, designate Hanoi City People's Court or Ho Chi Minh City People's Court to try that case.*

In respect to an offence committed abroad by the accused falling under jurisdiction of military court, zonal military courts or military court of higher level shall have jurisdiction over the case by decision of the President of the High Military Court."

[2] Article 84 (terrorism) of the Penal Code.

c. Article 147 (jurisdiction over offences committed on board of aircraft, vessels of the Socialist Republic of Vietnam while situating outside of the territory of the Socialist Republic of Vietnam) of the Criminal Procedure Code stipulates as follows:

"Offences committed on board of aircraft, vessel of the Socialist Republic of Vietnam while outside Vietnam territory shall fall under jurisdiction of a Vietnam's court of the location of airport or seaport where such aircraft or vessel would make their first arrival or court where those aircraft, vessel has been registered."

1.3. Regarding the protection of the economic and financial system:

1.3.1. Preventing criminal transactions: The CTC has noted that Vietnam has legislation regulating foreign exchange and banking activities. However, it is not clear from the report whether Vietnam has machinery in place to detect and prevent financial transactions linked to criminal activities and, in particular to terrorist purposes. The CTC would appreciate receiving more information concerning the relevant Vietnamese legislation. In particular, the Committee would be grateful for further information, as follow:

- What are the criteria by which transaction are characterized as unusual or suspicious in Vietnam?
- What kind of measures should an intermediary taken when he detects a suspicious transaction? Can suspect funds be frozen? If the answer to the previous question is in the affirmative, what procedures should be follow?
- Is an obligation to report suspicious transactions imposed on financial intermediaries, such as real estate agents, lawyers and accountants?
- What penalties are prescribed for not reporting suspicious financial transactions?
- To which authorities should these reports be submitted? Can Vietnam describe the competences and functions of the relevant authorities?

Vietnam's response:

a. The existing legal instruments of Vietnam do not stipulate specific criteria by which any transaction is characterized as unusual or suspicious. However, the draft Decree against Money Laundering (elaborated by the State Bank of Vietnam, planned to be promulgated by the end of 2003 or the beginning of 2004) shall set out these criteria.

In accordance with the above-mentioned draft Decree, the transactions on bank accounts or transferring funds to bank accounts of holders whose names are included in the list of international criminals or of terrorist individuals or entities named in the warning lists of international organizations are considered suspicious transactions.

b. Regarding suspicious transaction reporting procedure (relating to funds for terrorist acts, frauds, money laundering...), including the procedure on reporting of suspicious transactions by financial intermediaries, beside Article 19 of the Law on Credit Organizations and Article 36 of Decree No. 63/1998/ND-CP dated 17 August 1998 on Foreign Exchange Management (as set out in the Supplementary Report dated 18 December 2002), up to now, Vietnam has not yet enacted any legal instruments included specific provisions on the above-mentioned transactions.

In the implementation of Article 18 of the UN Convention for the Suppression of the Financing of Terrorism, Vietnam shall adopt provisions to oblige financial institutions to promptly report to the competent authorities all complicated, transactions of unusual patterns and those involving large amount, which have no apparent economic or obviously lawful purpose, without fear of being held for criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith.

In addition, detailed provisions relating to the reporting and analyzing information on suspicious transactions are also stipulated in the draft Decree against Money Laundering.

c. The draft Decree against Money Laundering also includes provisions on the penalties to be applied to the failure of reporting suspicious financial transactions.

d. In accordance with the above-mentioned draft Decree, the Suspicious Transaction Reporting Office under the State Bank of Vietnam shall be established, which is a specialized agency designated to collect and analyse financial information. And, financial institutions are bound to report suspicious transactions to this Bureau.

1.3.2. **Identification of customer**: What are the verification procedures which are legally biding on financial intermediaries with a view to determining the "economic ownership" of bank accounts or financial assets? If such obligations exist, have financial intermediaries ever been convicted in Vietnam for "inadequate vigilance" in relation to the verification of economic ownership?

Vietnam's response:

a. In accordance with existing provisions, financial intermediaries shall identify their customers before, during and after the process of lending of funds. In addition, the identification of customer is also implemented pursuant to Article 4 (record of deposit account opening) and Article 5 (account opening application form) of the Statute for Opening and Utilizing Deposit Account at the State Bank and Credit Institutions, which was promulgated under the Decision No. 1284/2002/QD-NHNN2 dated 21 November 2002 of the Governor of the State Bank of Vietnam.

b. The draft Decree against Money Laundering shall provide more specifically procedure on obligatory verification with a view to identify customers, as well as penalties to be applied to cases of failing to implement this obligation.

1.3.3. **Alternative money transfer**: Please outline the Vietnamese legal provisions which regulate the activities of alternative money transfer agencies or services. In the absence of such provisions, could Vietnam outline the steps which it proposes taking in order to give effect to this aspect of the Resolution in its domestic law.

Vietnam's response:

At present, Vietnamese competent authorities have promulgated legal instruments on granting license to individuals and entities in carrying out payment and transferring services or other banking services. Those who provide these services without license shall be fined in accordance with the Decree No. 20/2000/ND-CP dated 15 June 2000 on Sanctioning Administrative Violations in the Monetary Field and Banking Operations. Vietnamese competent authorities have also been implementing restrictive and preventive measures against illegal transferring forms.

1.4. Regarding the international cooperation:

1.4.1. **Legal assistance**: The CTC has noted that Vietnam lacks specific legislation in relation to mutual legal assistance and extradition. In addition, Vietnam has concluded very few bilateral treaties. How then can Vietnam meet its obligation under sub-paragraphs 2 (f) and 3 (c) of the Resolution with a view to providing assistance and cooperation to all other countries?

Vietnam's response:

a. Beside concluded Agreements on Legal Assistance in Criminal Matters between Vietnam and other countries (please refer to the Supplementary Report dated 18 December 2002), on 15 September 2003, Vietnam signed two Agreements on Legal Assistance in Criminal Matters and on Extradition between Vietnam and the Republic of Korea. Vietnam is also in the process of negotiation on agreements of these kinds with many countries, such as Canada, India and the Philippines...

Although Vietnam has not concluded many bilateral treaties in relation to mutual legal assistance, we are cooperating closely and effectively with other countries in this matter, on the following legal basis:

- Bilateral agreements on cooperation for prevention and suppression of crimes between the Ministry of Public Security of Vietnam and its counterparts of other countries;

- Bilateral treaties concluded between Vietnam and neighbouring countries relating to security and order protection, border control...;

- In case of absence of bilateral treaties, Vietnamese relevant authorities shall directly discuss with their counterparts of related countries to reach agreement for appropriate solutions, in accordance with their respective domestic law and international law.

b. The Criminal Procedure Code (as amended), which was adopted by the National Assembly in November 2003, includes a new Chapter for the international cooperation in criminal procedure related activities which provides principles for international cooperation during criminal investigation, prosecution, trial and execution process.

1.4.2. **International terrorist conventions**: The CTC is aware that Vietnam has ratified 8 of the 12 principal international conventions relating to terrorism. Could Vietnam outline the provisions which give effect to these international instruments in its domestic legislation? The CTC would also appreciate receiving an account of the penalties prescribed under Vietnamese criminal law in relation to those offences which are required to be established as crimes under the provisions of the Conventions and Protocols.

Vietnam's response:

a. According to the Ministry of Justice's General Report on the Evaluation of the Needs for Comprehensive Development of Vietnamese Legal System up to the Year 2010 and the draft Strategy for Development of the Vietnamese Legal System up to the Year 2010, which is being finalized by the Ministry of Justice in cooperation with other concerned ministries, the Penal Code will be amended to include Viet Nam's rights and obligations relating to counter-terrorism under the international treaties to which Viet Nam is a party.

b. Beside Article 84 (terrorism), the Penal Code also includes provisions on the offences established as crimes under the provisions of the multilateral treaties to which Vietnam is a parties. Those are:

- Article 82. Rebellion

> *"Those who conduct armed activities or resort to organized violence with a view to opposing the people's administration shall be penalized as follows:*
>
> *1. Organizers, active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment;*
>
> *2. Other accomplices shall be sentenced to between five and fifteen years of imprisonment."*

- Article 83. Conducting banditry activities

> *"Those who intend to oppose the people's administration by conducting armed activities in mountainous, marine and other difficult to access areas, murdering people and looting or destroying property shall be penalized as follows:*

1. Organizers, active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment;

2. Other accomplices shall be sentenced to between five and fifteen years of imprisonment."

- Article 85. Sabotaging the material-technical foundations of the Socialist Republic of Vietnam

"1. Those who intend to oppose the people's administration by sabotaging the material-technical foundations of the Socialist Republic of Vietnam in the political, security, defense, scientific-technical, cultural or social fields shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment.

2. In the case of committing less serious crimes, the offenders shall be sentenced to between five and fifteen years of imprisonment."

- Article 221. Hijacking aircrafts, ships

"1. Those who use force, threaten to use force or use other tricks to appropriate aircrafts or ships shall be sentenced to between seven and fifteen years of imprisonment.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve years and twenty years of imprisonment:

a) In an organized manner;

b) Using weapons or dangerous means;

c) Inflicting injury on or causing harm to the health of other persons;

d) Dangerous recidivism.

3. Committing the crime and causing human death or other particularly serious consequences, the offenders shall be sentenced to twenty years imprisonment, life imprisonment or capital punishment.

4. The offenders may also be subject to probation or residence ban for between one and five years."

1.4.3. **Transnational crime**: In its report, Vietnam indicates that it is aware of the strong links between organized crime and terrorism and it is intending to ratify the UN Convention on Transnational Organized Crime. Can Vietnam indicate what has been done since its last report.

Vietnam's response:

At the present, the Ministry of Justice, in collaboration with other relevant agencies, is studying the provisions of the UN Convention on Transnational Organized Crime (signed by Vietnam on 22 December 2000) to submit for ratification in the coming time.

2. ASSISTANCE AND GUIDANCE:

2.1. The CTC is eager to facilitate the provision of assistance and advice in connection with the implementation of the Resolution. The Committee would encourage Vietnam to let it know if there are areas in which assistance or advice might be of benefit to Vietnam in its implementation of the Resolution or of any areas in which Vietnam might be in a position to offer assistance or advice to other States on the implementation of the Resolution.

Vietnam's response:

In the implementation of the Resolution 1373 (2001), with the aim to strengthening its legal framework and promoting institutional capacity for counter-terrorism, Vietnam seeks assistance in the following areas:

- Reviewing and analysing existing legal provisions relating to counter-terrorism financing, with the aim to identifying the needs and contents to be completed and supplemented.

- Assistance in elaboration and implementation of legal documents relating to counter-terrorism financing.

- Strengthening capacity of officials directly involved in the elaboration and implementation of legal documents relating to counter-terrorism financing, in such forms as training, conference...

- Assistance and guidance in establishment of a focal point for counter-terrorism financing.

- Assistance in compiling database and establishment of information analysis center for the purposes of supervision and control of financial activities in relation to terrorism financing activities, especially methods of information collecting and analyzing, related-terrorist crime investigating ...).